

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.301 OF 2007

Between:

Kedas Balraj and others

. . .Appellants

AND

The Joint Collector-II, Ranga Reddy and others

. . .Respondents

:: JUDGMENT ::

Counsel for the appellants : Shri T.V.Rajeevan

Counsel for respondent Nos.1&2 : Government Pleader for
Revenue

12th April, 2007

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Per G.S.SINGHVI, CJ

This appeal is directed against order dated 6-3-2007 passed by the learned Single Judge in Writ Petition No.4501 of 2007, whereby he dismissed the writ petition filed by the appellants for invalidation of order dated 20-9-2005 passed by Joint Collector-II, Ranga Reddy District (respondent No.1 herein) in Case No.F1/3243/1999.

The appellants claim to be sons of Narsimha and grandsons of Kedas Rajaiah, who was a resident of Khalsa Village, Ibrahimpatnam Mandal, Ranga Reddy District. In 1999, they filed an appeal under Section 24 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short, 'the Act') questioning the legality of order dated 26-2-1982 passed by Revenue Divisional Officer (Lands), East Division, Ranga Reddy (respondent No.2 herein) whereby occupancy rights certificate was issued in favour of Kamruddin and Shamshuddin, sons of late Ahmed Ali (respondent Nos.3 and 4 herein) over Survey No.409 measuring Ac.9-01 gts. situated at Ibrahimpatnam (K) Village. The same was dismissed by respondent No.1 vide his order dated 20-9-2005. He noted that the period of limitation prescribed under Section 10 of the Act for filing an appeal against the order passed under Section 7 is 30 days and held that there is no warrant for entertaining an appeal preferred after a long time gap of 17 years.

The appellants challenged the above noted order in Writ Petition No.4501 of 2007. In the affidavit filed by him, appellant No.1 – Kedas Balraj averred that Khareem Ali Khan was pattedar of agricultural land measuring Ac.9-22 gts. comprised in Survey No.409 situated at Khalsa Ibrahimpatnam Village and that Kedas Rajaiah, Nallagodu Venkaiah and Godugu Ramaiah were the joint tenants; that after the death of the tenants, their successors occupied the land and cultivated the same; that Kedas Rajaiah was succeeded by his son Kedas Narsimha; that the petitioners (the appellants herein) are the sons of Kedas Narsimha and succeeded his tenancy rights; that the land in dispute was never cultivated by Ahmed Ali (father of respondent Nos.3 and 4); that PT certificate was erroneously issued in favour of Ahmed Ali and,

therefore, respondent Nos.3 and 4 could not have been granted occupancy rights. In paragraph 5 of his affidavit, appellant No.1 averred that neither he nor other appellants were aware of the application filed by respondent Nos.3 and 4 under Section 7 of the Act and order dated 26-2-1982 passed by respondent No.2 for grant of occupancy rights to them and that they discovered documents pertaining to their rights during the course of search in the house. Along with the writ petition, the appellants placed on record xerox copy of letter dated 18-1-1999 sent by Mandal Revenue Officer, Ibrahimpatan Mandal, Ranga Reddy District to Collector, Ranga Reddy District and averred that this was sufficient to establish that Ahmed Ali, PT was never in possession of the land in question.

The learned Single Judge dismissed the writ petition by observing that 17 years time gap between the grant of occupancy rights to respondent Nos.3 and 4 and filing of the appeal by the writ petitioners was fatal to their cause and respondent No.1 did not commit any illegality by refusing to entertain the appeal.

Shri T.V. Rajeevan argued that respondent No.1 committed a jurisdictional error by non-suiting the appellants only on the ground of limitation ignoring the fact that they were not parties to the application filed by respondent Nos.3 and 4 under Section 7 of the Act and that immediately on coming to know about the grant of occupancy rights to those respondents, they filed appeal under Section 24. Learned counsel further argued that the appellants and their predecessors have been in possession all- through and they cannot be dispossessed by respondent Nos.3 and 4 on the strength of occupancy rights certificate issued by respondent No.3.

We have given serious thought to the arguments of the learned counsel, but have not felt impressed. Rather, we are convinced that the appeal is wholly meritless and is liable to be dismissed summarily.

The parameters for exercise of the High Court's power to issue a writ of certiorari are well defined. Such writ, order or direction can be issued for correcting errors of jurisdiction committed by inferior courts

or tribunals or quasi-judicial authorities. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal, etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari – **Syed Yakooob v. K.S. Radhakrishnan**^[1], **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**^[2], **R.S. Saini v. State**

**of Punjab and others^[3], Mohd. Shahnawaz Akhtar & Anr. v. Ist
ADJ Varanasi & ors.^[4].**

Having noted the limited scope of the High Court's power of judicial review, we shall now consider whether order dated 20-9-2005 passed by respondent No.1 is vitiated by any jurisdictional infirmity or an error of law apparent on the face of the record and the learned Single Judge committed an error by refusing to quash the same. A reading of that order shows that after taking cognizance of the grievance of the appellants qua order dated 26-2-1982, the officer concerned noted that they have not filed petition for condonation of delay and that the only explanation for 17 years time gap was in the form of an assertion contained in the affidavit that while searching the house, they found some old records pertaining to the land in question which revealed their rights over the land. Respondent No.1 then observed that the period of limitation prescribed for filing an appeal under Section 10 of the Act is 30 days and, even though the Appellate Authority can, on sufficient cause being shown, entertain the appeal after expiry of that period, held that the explanation given by the appellants is wholly unsatisfactory. In the opinion of respondent No.1, it was not possible to believe that the appellants did not know about the occupancy rights certificate issued in favour of respondent Nos.3 and 4 for a period of 17 years. For the sake of reference, the relevant portions of the order passed by respondent No.1 are extracted below:

“The appellant has sought condonation of the delay on the ground that the impugned order came to his knowledge only recently. It is difficult to believe that the impugned order was not within the knowledge of the appellant for such a long time i.e. about 17 years, given the fact that he claims to be one of the occupancy rights holder. Further, even assuming that he had no knowledge of the Occupancy Rights Certificate, being a claimant to occupancy rights he ought to have preferred a claim to Occupancy Rights Certificate before the Revenue Divisional Officer at the earliest opportunity.

‘Vigilantibus non dormantibus jure subvenient’ (laws assist the vigilant and not those who sleep over their rights) is a

well established canon of justice.

In the instant case, the appellant has taken the plea of 'absence of knowledge' for condonation of delay. A mere plea of 'absence of knowledge' is not a sufficient cause for condonation of delay. For thereby any person can invoke the plea of 'absence of knowledge' and then set the very limitation law at naught. The real test in all such cases is the earliest opportunity the appellant had for securing knowledge of the impugned order. Time begins to run from when the appellant had the earliest means of obtaining the knowledge of the impugned order.

In the instant case, the appellant staking a claim of occupancy of Inam lands ought to have applied for occupancy rights long back. That he did not do so demonstrates slackness or willful delay in asserting one's own rights. Law enjoins alertness and vigilance and does not assist a person who has slept over his rights for an extraordinary length of time. The appellant has not given proper explanation for the delay caused in preferring the appeal. As such, the appeal petition is held to be barred by limitation. Hence, it is dismissed."

The learned Single Judge referred to report dated 18-1-1999 prepared by Mandal Revenue Officer, Ibrahimpatnam Village, which revealed that respondent Nos.3 and 4 had sold the land to Smt.K.Andalamma and Smt.K. Ananthalaxmamma, who in turn divided the same into plots and sold for house-sites except to the extent of Ac.0.36 gts., which was in possession of Agricultural Market Committee and held that the discretion exercised by respondent No.1 not to condone the delay of 17 years does not warrant interference under Article 226 of the Constitution.

We are in complete agreement with the learned Single Judge. In our considered view, the bald assertion contained in the affidavit filed on behalf of the appellants that they came to know about their right over the land during the search conducted in the house lacked credibility and respondent No.1 rightly refused to rely on the same for condoning 17 years delay in filing the appeal. The most important factor which belies the story of the appellants is that appellant No.4 – Kedas Bhaskar s/o.late Narsimha had submitted an application dated

23-4-1997 for grant of occupancy rights certificate and this fact was concealed by the appellants from the Appellate Authority i.e. respondent No.1. Not only this, the appellants did not explain as to why they did not file application for grant of occupancy rights certificate till 1997. Therefore, the discretion exercised by respondent No.1 not to entertain the appeal preferred by them after a time gap of 17 years cannot be declared as vitiated by an error of law apparent on the face of the record and the learned Single Judge did not commit any error by declining interference with order dated 20-9-2005. The mere possibility of this Court forming an opinion different than the one formed by judicial or quasi-judicial body is not sufficient for exercise of the power of judicial review and, in any case, this Court cannot exercise appellate jurisdiction in such matters.

There is another reason for our disinclination to interfere with the order under challenge. As per the Mandal Revenue Officer's report dated 18-1-1999, respondent Nos.3 and 4 sold the land to Smt.K. Andamma and Smt.K. Anantalaxmamma, who in turn converted the same into plots and sold to third parties. The appellants knew about this fact and yet they did not implead the transferees as parties to the writ petition. Therefore, the writ petition filed by them was liable to be dismissed only on the ground of non-joinder of necessary parties.

Before concluding, we deem it proper to observe that it is neither the pleaded case of the appellants nor the learned counsel has argued that respondent No.1 did not have the jurisdiction to decide the appeal preferred by them and, therefore, we have not dealt with that aspect of the matter.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.573 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

April 12, 2007

C.V.NAGARJUNA REDDY, J

SVS

[\[1\]](#) AIR 1964 SC 477

[\[2\]](#) AIR 1970 SC 61

[\[3\]](#) JT 1999 (6) SC 507 = (1999) 8 SCC 90

[\[4\]](#) JT 2002 (8) SC 69 = (2002) 9 SCC 375